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Pro hac vice

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Attorneys for Plaintiff Center for Biological Diversity

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff,

v.

DEB HAALAND, Secretary of the Interior,
in her official capacity; and

MARTHA WILLIAMS, Director of the
U.S. Fish & Wildlife Service, *in her
official capacity*,

Defendants.

No. 1:22-cv-00335-DAD-BAK

JOINT SCHEDULING REPORT

Scheduling Conference Date: July 12, 2022

Time: 10:30 am

Judge Dale A. Drozd

Pursuant to this Court's March 23, 2022 Order, ECF No. 6, Plaintiff and Defendants ("the Parties") provide the following joint scheduling report. The Parties report to the court as follows:

1. Summary of the factual and legal contentions:

- a. On October 20, 2020, the Center for Biological Diversity submitted an Endangered Species Act ("ESA") Petition to the U.S. Fish and Wildlife Service to list the Temblor legless lizard as an endangered or threatened species and designate critical habitat. Petition (Ex. A), ECF No. 1-1; Answer at ¶¶ 3, 34, ECF No. 12.
- b. Within 90 days of receiving a petition, the U.S. Fish and Wildlife Service ("Service") must, "[t]o the maximum extent practicable," make a finding as to

“whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. § 1533(b)(3)(A) (“90-day finding”).

c. The Service issued a 90-day finding on the Temblor legless lizard petition that action may be warranted on June 17, 2021. 86 Fed. Reg. 32,241, 32,242 (June 17, 2021); Answer at ¶ 35, ECF No. 12.

d. When the Service finds that the petitioned action may be warranted, it must commence a review of the status of the species and within 12 months of the receipt of the petition decide whether the listing is: (1) not warranted; (2) warranted; or (3) warranted but precluded by other pending listing decisions, provided that the Service demonstrates that it is making “expeditious progress” on the other proposals. 16 U.S.C. § 1533(b)(3)(A)-(B). This finding is known as a “12-month finding.”

e. Plaintiff contends that the Service’s 12-month finding on the Temblor legless lizard petition was overdue as of October 20, 2021.

f. Plaintiff thus requests that the Court:

i. enter a declaratory judgment that Defendants have violated the ESA by failing to make a timely 12-month finding on the Petition to list the Temblor legless lizard, and

ii. issue an injunction compelling Defendants to make the overdue 12-month finding within nine months of this Court’s ruling.

2. Neither party intends to seek amendment of a pleading in this proceeding.

3. Summary of uncontested and contested facts:

a. Neither party contests that Plaintiff submitted an ESA Petition to list the Temblor legless lizard as an endangered or threatened species and designate critical habitat to the Service on October 20, 2020. Petition (Ex. A), ECF No. 1-1; Answer at ¶¶ 3, 34, ECF No. 12.

b. Neither party contests that the Service issued a 90-day finding on the Temblor legless lizard Petition that action may be warranted on June 17, 2021. 86 Fed. Reg. 32,241, 32,242 (June 17, 2021); Answer at ¶ 35, ECF No. 12.

c. Neither party contests that Defendants have not yet published a 12-month finding on the Temblor legless lizard Petition. Answer at ¶¶ 3, 6, 36, 39, ECF No. 12.

4. Summary of the legal issues as to which there is no dispute or dispute:

a. The Parties do not dispute that:

- i. this Court maintains jurisdiction over this proceeding;
- ii. this proceeding has been brought in the proper venue;
- iii. this case turns on an issue of federal law, namely the ESA, 16 U.S.C. §§ 1531–1534;
- iv. this case can properly be resolved without a trial;
- v. this case can be resolved and should proceed on motions for summary judgment under Federal Rule of Civil Procedure 56.

b. The primary legal dispute between the Parties is as to an appropriate remedy for Defendants' issuance of a 12-month finding on the Plaintiff's Petition to list the Temblor legless lizard.

5. Status of matters presently set before the court:

a. Plaintiff filed a Motion for Summary Judgment on June 30, 2022.

b. A hearing on this Motion was requested for September 6, 2022 at 9:30am before Judge Drozd in Courtroom 5 located at the Robert E. Coyle Federal Courthouse, 2500 Tulare Street, Fresno, CA 93721.

- i. Pursuant to the Court's Minute Order dated July 1, 2022, Plaintiff respectfully requests that this Court hear oral argument in this case, but the Parties defer to the Court's judgment on whether oral argument will be necessary.

- 1 6. A discovery plan is not necessary as neither party intends to seek discovery in this
2 proceeding.
- 3 7. Neither party intends to seek discovery in this proceeding.
- 4 8. Dates agreed to by all counsel:
 - 5 a. Deadline for non-dispositive and dispositive pre-trial motions: July 14, 2022.
 - 6 b. Pre-trial conference date: n/a.
 - 7 i. The Parties agree this proceeding can be resolved without a trial.
 - 8 c. Trial date: n/a.
 - 9 i. The Parties agree this proceeding can be resolved without a trial.
 - 10 d. Proposed briefing schedule agreed to by all counsel:
 - 11 i. Plaintiff filed its Motion for Summary Judgment on June 30, 2022,
12 ECF No. 14.
 - 13 ii. Deadline for Defendants' Cross-Motion for Summary Judgment and
14 Opposition to Plaintiff's Motion for Summary Judgment: July 14,
15 2022.
 - 16 iii. Deadline for Plaintiff's Opposition to Defendants' Motion for
17 Summary Judgment and Reply: July 25, 2022.
 - 18 iv. Deadline for Defendants' Reply: August 4, 2022.
- 19 9. Summary of the Parties' settlement efforts:
 - 20 a. Counsel for the Parties have engaged in settlement discussions consisting of
21 various emails and three phone calls, including on April 21, 2022, May 18,
22 2022, and June 23, 2022.
 - 23 b. Additionally, on May 26, 2022, the Parties filed a Joint Motion for a 30-Day
24 Stay of Proceedings to provide additional time for counsel to negotiate a
25 potential settlement. ECF No. 11.
 - 26 c. Counsel for both parties have negotiated in good faith to resolve the dispute
27 before this Court but have been unable to agree to a settlement.

d. Counsel have exhausted settlement efforts and agree this case should proceed before this Court on cross-motions for summary judgment.

10. Statement as to whether the case is a jury or non-jury case: n/a.

a. The Parties agree this proceeding can be resolved without a trial.

11. Estimate of the number of trial days required: n/a.

a. The Parties agree this proceeding can be resolved without a trial.

12. The Parties agree that this proceeding is unrelated to any matter pending in this Court or any other court, including any bankruptcy court, pursuant to Local Rule 123(a).

13. Neither party requests bifurcation or phasing of trial, or has any other suggestion for shortening or expediting discovery, pre-trial motions or trial.

14. Consent/decline to jurisdiction of U.S. Magistrate Judge:

a. Plaintiff has declined to consent to Magistrate Jurisdiction. ECF No. 13.

b. Defendants have declined to consent to Magistrate Jurisdiction. ECF No. 17.

15. The Parties have jointly completed the attached "Scheduling Conference Worksheet."

Dated: July 5, 2022

Respectfully submitted,

/s/Margaret A. Coulter

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

/s/ Margaret A. Coulter